IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1052 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF LEGAL REPRESENTATIVES DECESAED CHHANABHAI B PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1052 of 2002

MR AJ PATEL for Petitioner No. 1-4

MR KAMAL B TRIVEDI, ADDL. ADVOCATE GENERAL WITH

MR SP SEN, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 01/04/2002

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the order dated 12.12.2001 (annexure "J") passed by the District Collector, Ahmedabad in so far as the Collector has rejected the petitioners' claim for allotment of wada land under the provisions of the Bombay Land Revenue Code, 1879.

2. The petitioners claim to be the heirs and legal representatives of deceased Chhanabhai Becharbhai Patel who inherited wada land bearing City Survey No. 115, admeasuring 163.41 sq. yards in village Nava Wadaj. At the relevant time, Nava Wadaj was a village situate in the outskirts of the City of Ahmedabad, but since about 1952 Nava Wadaj is within the municipal limits of the Ahmedabad Municipal Corporation. The petitioners' case is that the said land was granted to the forefather of the petitioners about 150 years back and it is being used by the occupants from time to time and at present it is occupied by the petitioners. According to the petitioners, the land was granted to the forefathers of the petitioners to enable them to keep their domesticated cattle and agricultural equipments as the land is situate just in front of the residential house of the occupants of the said wada land. In order to provide shelter to the cattle and protect agricultural implements, the petitioners' forefathers had put up a superstructure on the said land. It is also the petitioners' case that in village Nava Wadaj there are hundreds of such wada lands on which similar structures are put up and are being used as such since times immemorial.

3. The petitioners have also submitted that the State Government had issued Wada Code containing the Rules for disposal of wada lands of village site and agricultural lands. The Government resolutions issued in this behalf were subsequently consolidated and the Government passed resolution dated 25.4.1980 (Annexure "C") laying down detailed rules for allotment of such wada lands and for regularizing the construction put up on such wada lands. Government Resolution dated 19.4.1986 (Annexure "D") was an amendment to the aforesaid resolution at Annexure "C". In the year 1989, the Collector had decided to grant the wada lands to the concerned parties including the petitioners and, therefore, by communication dated 2/8.9.1989 (Annexure "E"), the Collector, Ahmedabad called upon Chhanabhai B Patel, father of the petitioners herein, to deposit an amount of Rs.2,451-15 towards occupancy price of the land in question. The father of the petitioners complied with the said communication from the Collector and deposited the amount of Rs.2,451-15 which was acknowledged by the concerned official as per receipt at Annexure "F" to the petition.

4. According to the petitioners, in view of the aforesaid communication, the grant of the land to the petitioners' father stood regularized by the Collector

and nothing further was required to be done by the deceased and that the Government was required to issue a sanad in favour of the petitioners' father for the land in question. Hence, the petitioners' father submitted an application dated 24.4.1991 (Annexure "G") requesting the City Survey Superintendent, Ahmedabad to issue a sanad in respect of the wada land for which the petitioners' father had paid the aforesaid amount as occupancy price. The petitioners' father expired in December, 1999 and thereafter the petitioners came to learn that in three other petitions being Special Civil Application Nos. 4993, 4995 and 4996 of 2001, this Court had passed order dated 6.9.2001 directing the Collector to take appropriate decision in the matter of grant of wada lands to the petitioners in those petitions in accordance with the relevant Government resolutions and the Wada Code issued from time to time and also in light of the order passed by the Collector, Ahmedabad granting wada land in city survey No. 14 to its holder.

5. Pursuant to the aforesaid directions of this Court, the Collector passed order dated 12.12.2001 (Annexure "J") by which the Collector held that only 22 parties were eligible to get allotment of the wada land in question and that the other persons whose names are mentioned from Sr.Nos. 23 to 105 were not entitled to get allotment of any wada land because the present occupants were not either original allottees or the occupants were not eligible to get allotment of the wada land as per the Government resolutions. The petitioners' names figure at item No. 98 in the statement annexed to the said order dated 12.12.2001 (page 64 of the paper book).

It is the aforesaid order which is under challenge in this petition.

6. Mr AJ Patel, learned counsel for the petitioners has vehemently submitted that the petitioners are entitled to get allotment of the wada land in question as a matter of right. It is submitted that it was because the petitioners were eligible to get allotment of the wada land that they were required to pay the occupancy price in the year 1989 as per the communication dated 2/8.9.1989 (Annexure "E") from the Collector. It is further submitted that once the petitioners paid the price as per the aforesaid communication, the wada land already stood allotted to the petitioners and the formality of executing a sanad was the only formality which was required to be completed by the Collector. It is submitted that the petitioners' forefathers having used the wada land in question for the last 150 years,

the petitioners are entitled to get allotment of the wada land for which the petitioners have already paid the price way back in the year 1989. It is further submitted that the respondents have not given any opportunity of hearing to the petitioners before recording any adverse finding against the petitioners.

7. On the other hand, Mr Kamal B Trivedi, learned Additional Advocate General with Mr SP Sen, learned Assistant Government Pleader for the respondent authorities have opposed the petition and submitted that the petitioners have no right to claim allotment of any wada land unless the petitioners' case falls within the Government Resolution dated 25.4.1980 (Annexure "C") and subsequent Government resolutions on the subject matter issued from time to time. As defined in the said Government Resolution "Wada" is an open land which is used for keeping agricultural implements or for keeping the cattle or where use of the land is made for convenience and facility of agricultural operations to the farmers. Strong reliance is placed clause 2.1 of the Government Resolution dated 25.4.1980 (Annexure "C") defining "wada" to the aforesaid effect.

It is submitted that earlier only a policy decision was taken to allot wada lands to persons who were covered by the Wada Policy and, therefore, such persons were also given intimation regarding the amounts required to be deposited by them. However, at the time when the orders were passed in 1989 and the occupancy price was collected in 1992, no factual enquiry was undertaken to ascertain whether the applications were the original allottees and whether they were required to be allotted wada lands. However, thereafter, a physical spot inquiry revealed that the petitioners are not using the land in question as wada land for storing the agricultural equipments or for keeping the cattle, but at the site in question shops are being run by the petitioners such as Dhara Novelties, Varieties Cutpiece, Goldsmith Niranjan Soni and Manilal Parshottam. It is submitted that the physical on the spot enquiry revealed that none of the petitioners were carrying on agricultural operations for which they would need the wada land for the purpose of storing agricultural implements and keeping cattle on the land in question. The statement annexed to the Collector's order dated 12.12.2001 also clearly shows that the land in question is being used for commercial purposes by putting up shops without any prior permission of the authorities.

As regards the contention that the petitioners

were not given any opportunity of being heard, it is submitted that the Collector had got the enquiries made by spot visit by a Government official to find out the use of the land in question and the construction thereon. When the petitioners have not challenged in the memo of the petition the findings recorded in the impugned order at item No. 98 (page 64) that the petitioners are running shops like Dhara Novelties, Varieties Cutpiece, Goldsmith Niranjan Soni and Manilal Parshottam, etc., the question of giving the petitioners any hearing would not arise and that the hearing is required to be extended to only those parties who come forward with a claim that the wada land in question is being actually used for storing agricultural implements and for keeping the cattle useful for agricultural purposes.

9. Having heard the learned counsel for the parties, it appears to the Court that by the aforesaid Government Resolution dated 25.4.1980 (Annexure "C"), the Government had evolved the policy of granting wada land to the farmers at a concessional rate. In para 2.1 thereof, "Wada" has been defined as open land on which agricultural implements are stored or on which cattle are kept. The Talati-cum-Mantri of the village and the Sarpanch of the concerned gram panchayats are required to maintain a register for such wada lands. If any construction is put up on the land in question, whether such construction was put up in an authorized manner or not, is required to be enquired into and if the person is found to be eligible, alongwith the grant of land, the question of regularization of the construction by the local authority will also have to be considered. The construction on the wada lands within the urban areas is to be governed by the relevant local building regulations. For the land within the urban areas, occupancy price at the concessional rate of 25% of the market price was determined (pages 51-52). It is, therefore, clear that the allotment of wada land at a concessional rate (i.e. 25% of the market value) is to be made if the wada land in question is being used for storing agricultural implements and for keeping the cattle. It is also required to be noted that the wada land cannot be allotted before proper enquiry is made by the Circle Inspector or the Talati-cum-Mantri as to whether the applicant fulfills the eligibility criteria and the applicant is also required to give particulars about the number of years for which the possession of the land is with the applicant and the present particulars of the use of the wada land. The Circle Inspector or the Talati-cum-Mantri of the village is required to make the enquiry and inform the Mamlatdar about the outcome of the

enquiry.

10. A perusal of the aforesaid Government Resolution does indicate that any person who applies pursuant to the Wada Code is not entitled to be allotted wada land as a matter of course. Even if the Collector had earlier required the petitioners to deposit a sum of Rs.2,451-15 for 163 sq.mtrs. of land in Wadaj which is within the Municipal Corporation limits of Ahmedabad since 1952, it did not mean that the Collector had authority to dispense with the enquiry contemplated by the Wada Code. It appears that at 25% of the market price, the occupant of the wada land was required to pay a price of only about Rs.15/- per sq.mtr. Ultimately, when this Court disposed of Special Civil Application No. 4993 of 2001 and connected matters on 6.9.2001, this Court directed the authorities to take appropriate decision after taking into consideration various Government resolutions in respect of the wada land and also the orders passed by the Collector in respect of City Survey No. 14 in Nava Wadaj, Ahmedabad.

The Collector had got the enquiries made and found that the petitioners are making commercial use of the premises and that the wada lands in question and the superstructures thereon are not being used for storing agricultural implements or for keeping the cattle. This is a finding of fact which is not challenged.

11. Mr AJ Patel, learned counsel for the petitioners submits that the petitioners were not given any opportunity of being heard and, therefore also, the impugned order is illegal and void ab initio.

The contention is misconceived. The enquiry would have been necessary if it was the petitioners' case that they were using the wada land for storing agricultural equipments and/or for keeping the cattle. In this petition, all that the petitioners have been harping is the use to which the petitioners' forefathers had put the land for a number of years, but it is not the petitioners' case in the petition that the finding given in the impugned order at Sr.No. 98 is factually incorrect. In this view of the matter, the question of holding an enquiry would not arise. As per the settled legal principle, lack of an opportunity of hearing is of no consequence when the order which is sought to be challenged would not have been any different even after hearing (vide the Supreme Court decision in Aligarh Muslim University vs. Mansoor Alikhan, (2000) 7 SCC 529 and the decision of this Court in Mahesh T. Rabari vs.

Director of Primary Education, 2002(1) GLH 438). In the facts of the instant case, since the petitioners have not even come out with any case that they are presently using the land in question as wada land, the question of hearing would not arise.

12. Mr, AJ Patel, learned counsel for the petitioners, however, vehemently submitted that when the decision was taken in the year 1989 and the occupancy price was accepted by the Government in 1992, there was no question of holding any further enquiry. As the decision was already taken at that point of time after considering all the relevant facts, there is no question of going back on that issue.

13. In the Government Resolution dated 19.4.1986 (Annexure "D") regarding disposal of wada land in Nava Wada, it was specifically mentioned that the occupants of 123 properties in Nava Wadaj will be given wada land on permanent basis in accordance with the Wada Code. Hence, it was a general decision which was taken as a policy decision and the Government had agreed in principle to make permanent allotment of the wada land, but such allotment was not to be made de horse the Wada policy which was already embodied in the Government resolution dated 25.4.1980. Similarly, determination of the concessional price for the wada lands in 1989 or thereafter or payment thereof by the petitioners in 1989 or thereafter did not confer any indefeasible right on the petitioners and get permanent allotment of the wada land if the petitioners' case was not covered by the Wada Code.

14. As regards the final contention of Mr Patel that non-agricultural use of the land in question did not disqualify the petitioners from getting permanent allotment of the wada land, it is required to be noted that the allotment of wada land is to be made at a concessional price only in favour of persons who have been using the wada land for storing agricultural equipments and/or for keeping cattle. That is the central theme of the Government Resolution dated 25.4.1980 (Annexure "C"). The argument that the Government resolution dated 19.4.1986 (Annexure "D") contemplates regularization of the construction and, therefore, even for non-agricultural purposes does not take into account the fact that even for storing agricultural implements and for keeping cattle, the farmers would be required to put up construction on the wada land and if such construction was put up without prior permission of the competent local authority, the

occupants were required to get such unauthorized construction regularized. Since the lands in question which are the subject matter of the permanent allotment as wada lands, are public lands, the petitioners cannot claim any fundamental right to get such land allotted to them merely on the strength of past user of the land and that too at a throw away price of hardly about Rs. 15 per sq.mtr. (Rs.2451 divided by 163 sq.mtrs.), when the market price thereof would not be less than Rs.1000 (Rupees one thousand) per sq. mtr. a fact of which the Court can take judicial notice.

15. In view of the above discussion, the petition is dismissed. Rule is discharged with no order as to costs.

(M.S. Shah, J.)
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